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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIRST APPELLATE DISTRICT
DIVISION TWO

JAMES GRIER,

Plaintiff and Appellant,

v.

ALEH K. BATURYN,

Defendant and Respondent.

A141381

(Alameda County
Super. Ct. No. HG13669853)

James Grier appeals, in propria persona, from the trial court's grant of Aleh K. Baturyn's motion for attorney fees, brought pursuant to Code of Civil Procedure section 527.6, subdivision (r),¹ following the court's denial of Grier's petition for injunctive relief against Baturyn for alleged harassment. We shall affirm the attorney fees order.

BACKGROUND

Baturyn's wife, Nancy Truong, was formerly married to Grier. Grier and Truong separated in 2006 and divorced in 2007, and Truong subsequently married Baturyn. This case is one of a series of legal actions involving Grier, Truong, and/or Baturyn.²

¹ All further statutory references are to the Code of Civil Procedure unless otherwise indicated.

² This brief summary of the underlying relationships of the parties is taken from an unpublished opinion, *Grier v. Truong* (May 22, 2014, A139010, A139913), in which our colleagues in Division Three affirmed an order granting a five-year domestic violence restraining order directing that Grier not harass or contact Truong or Baturyn, and dismissed Grier's challenge to the subsequent non-appealable order finding that he had violated the restraining order.

On March 5, 2013, Grier filed a petition for a civil harassment restraining order against Baturyn in Alameda County Superior Court, in which he alleged, inter alia, that Baturyn and Truong had been sending him “horrible emails filled with personal information,” in retaliation for a fraudulent family law action that “did not go well for them.” On March, 6, the trial court granted a temporary restraining order (TRO) and set a subsequent hearing on the petition for a civil harassment restraining order.

At an April 12, 2013 hearing, the trial court vacated the TRO, so that Baturyn could return to his job as a security guard with the federal government, and set a hearing date of May 3 on a discovery motion Grier had filed, which was related to the identity of a Comcast Internet Protocol (IP) address. The court also set a tentative trial date of June 8 on the civil harassment petition.

At the May 3, 2013 hearing, Grier explained that the Comcast IP addresses regarding which he was requesting discovery had been “found to be regular IP addresses that are login points for [Truong] and her home computer as well as IP addresses that have been used to send harassing e-mails to myself as well as to set up one of those e-mail accounts from [*sic*].” The trial court allowed Grier’s subpoena to Comcast to go forward, with the information to be sent to the court under seal, so that the court could determine its relevance. The court stated that it would “allow this subpoena to go forward provided, and this is the big issue, it [*sic*] must send a copy to counsel first before you send it because I want to make sure everyone’s in agreement on this document.”

On May 6, 2013, Grier filed a proposed order, but the court rejected it on May 24, apparently because Grier had not first sent it to Baturyn’s attorney for review. On May 28, Grier again filed a proposed order, along with a motion to compel discovery and a motion for sanctions. On May 29, 2013, the court set a hearing on Grier’s motion to compel for July 23, and continued the trial date to November 15.

On June 17, 2013, Grier sent Baturyn’s counsel the proposed discovery order, asking that he sign and return it to Grier. In a July 15 letter to the court, Baturyn’s counsel wrote that the order “does not conform to what you ordered on May 3rd, 2013.

[Grier] included other IP addresses which were not part of the his [*sic*] motion. I informed [Grier] that the proposed order did not conform to what was ordered at the hearing. Instead of revising the order, [Grier] submitted it to you for your signature.”

Grier did not appear at the July 23, 2013 hearing on his motions to compel discovery and for sanctions. The court therefore denied both motions.³

On July 31, 2013, Grier filed another motion to compel discovery, which was set for hearing on September 3. At the September 3, 2013 hearing, the matter was continued to September 20.

At the September 20, 2013 hearing, the trial court explained to Grier that he should not have filed a second motion to compel. The court then heard argument from the parties regarding the agreed-upon scope of the Comcast subpoena, and took the matter under submission. In an order filed on November 12, the court approved, without change, Grier’s proposed order for immediate service on Comcast.

On September 25, 2013, Grier filed another motion to compel discovery—this time against Yahoo, Inc.—that was related to Baturyn’s Yahoo email account. The motion was scheduled for hearing on the morning of November 15.

Grier did not appear at the November 15, 2013 hearing and the trial court denied the motion to compel and an accompanying motion to continue the trial.

At the afternoon trial that also took place on November 15, 2013, and at which Grier did appear, the trial court first noted that the Comcast discovery had been received. After hearing the testimony of Truong, Baturyn, and Grier and, following argument by both parties, the court denied Grier’s petition for a civil harassment restraining order. The court found that there was insufficient evidence that Baturyn had sent the offending emails, and further found that, even assuming that Baturyn had sent them, “for purposes of making this ruling, the court finds that the e-mails themselves such as they are were

³ At a subsequent hearing, Grier claimed that he had repeatedly attempted to call the court to participate in the hearing telephonically, but the court was not informed that he had called.

not sufficient under [section] 527.6 to have justified a long-term restraining order in this matter.”

On December 19, 2013, Baturyn filed a motion for attorney fees, pursuant to section 527.6, subdivision (r). At the January 24, 2014 hearing on the motion, the trial court denied Baturyn’s request for payment of lost wages⁴ and cut four hours from the request for fees based on preparation of the attorney fees motion and preparation for the hearing on the motion. The court then awarded Baturyn a total of \$17,250 in fees for his attorney’s 69 hours of work defending against Grier’s petition for a civil harassment restraining order.⁵

On March 21, 2014, Grier filed a notice of appeal.

DISCUSSION

Section 527.6, the statute under which Grier petitioned for a civil harassment restraining order, permits the entry of a temporary restraining order and injunction prohibiting harassment of one person by another. (§ 527.6, subd. (a).) Subdivision (r) of that section provides that “[t]he prevailing party in any action brought under this section may be awarded court costs and attorney’s fees, if any.” (§ 527.6, subd. (r).) Because section 527.6 does not define “prevailing party,” we look to the general definition of “prevailing party” in section 1032. (*Adler v. Vaicius* (1993) 21 Cal.App.4th 1770, 1777.) Section 1032, subdivision (a)(4), provides, inter alia: “ ‘Prevailing party’ ” includes . . . a defendant as against those plaintiffs who do not recover any relief against that defendant.” Whether to award attorney fees is a matter committed to the discretion of the trial court. (*Krug v. Maschmeier* (2009) 172 Cal.App.4th 796, 802.)

In the present case, Grier contends the trial court abused its discretion when it awarded attorney fees to Baturyn without first considering Baturyn’s misuse of the discovery process during the underlying proceedings. Grier argues in great detail about

⁴ Apparently, as a security guard, Baturyn could not work while there was a TRO in place against him.

⁵ The award was based on counsel’s hourly rate of \$250.

the allegedly bad faith conduct of Baturyn and his counsel during the proceedings on Grier's petition, including claimed perjury and repeated discovery violations, that unnecessarily increased litigation costs. He argues for the applicability of numerous statutes, including section 2023.30, subdivision (a), which provides that the trial court may impose a monetary sanction on a party or attorney for misuse of the discovery process. In support of his claim that the trial court failed to take into account Baturyn's discovery abuses when it awarded attorney fees, Grier also cites *Doppes v. Bentley Motors, Inc.* (2009) 174 Cal.App.4th 967, in which the appellate court found that the trial court should have imposed terminating sanctions due to a party's ongoing, egregious discovery abuses.

Grier's attempt to re-litigate Baturyn's alleged discovery abuses from the underlying proceedings in the trial court is meritless. By the time of the hearing on the request for attorney fees, the trial court had already denied Grier's petition for a civil harassment restraining order. That Grier did not like some of the actions of Baturyn or his counsel during those proceedings does not alter the following facts: (1) Grier's request for an injunction was denied; (2) no discovery-related sanctions were imposed against Baturyn or his attorney; (3) the court subsequently found that Baturyn was the prevailing party for purposes of an award of attorney fees under section 527.6, subdivision (r); and (4) Grier is appealing solely from the court's award of attorney fees to Baturyn.⁶ The court did not abuse its discretion in awarding attorney fees to Baturyn. (See *Krug v. Maschmeier*, *supra*, 172 Cal.App.4th at p. 802.)⁷

⁶ The judge who awarded attorney fees to Baturyn was not the same judge who had previously denied the petition for a civil harassment restraining order. But the judge at the hearing on the motion for attorney fees did state that he had reviewed the entire file and explained to Grier, "you may not agree with what [Baturyn] may have done practically in responding [to Grier's motions], but I'm not here to go into that. To me, this is very simple. I'm looking at his motion for attorneys fees. . . ."

⁷ On July 30, 2014, Grier filed a "Notice of Motion and request for order for evidence of record," in which he asked that we consider evidence not included in the clerk's transcript, specifically evidence that purportedly "identifies the identity of and

DISPOSITION

The trial court's order granting Baturyn's motion for attorney fees in the amount of \$17,250 is affirmed. Costs on appeal are awarded to Baturyn.

Kline, P.J.

We concur:

Richman, J.

Stewart, J.

ownership of the Internet Protocol Address [] which [Grier] alleges [] was used to create and send harassing emails" to Grier. In the motion, Grier argues, "The fact that the I.P. address in question was registered to Baturyn's spouse as identified by the Comcast subpoena evidence and Baturyn denied this for over nine months under direct examination is directly material to Baturyn causing extension of proceedings th[r]ough conduct meant to frustrate discovery in violation of [section] 2030."

On August 19, 2014, we took the motion under submission, to be decided with the merits of the appeal. We now deny Grier's motion because, as discussed, the underlying facts that he attempts to re-litigate are unnecessary to the determination of whether the trial court abused its discretion in awarding attorney fees to Baturyn. (See text, *ante*.)